

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

SCOTT E. MILLER,

Petitioner,

v.

CAUSE NO. 3:19-CV-901-RLM-MGG

WARDEN,

Respondent.

OPINION AND ORDER

Scott Miller, a petitioner without an attorney, filed a habeas corpus petition challenging his drug dealing conviction and sentence by the LaGrange Superior Court on April 11, 2005, under cause number 44D01-0407-FA-009. This isn't the first time that he has brought a habeas corpus petition challenging that conviction. In Miller v. Superintendent, 2:13-CV-282-JMS-WGH (S.D. Ind. filed Aug. 5, 2013), our sister court addressed the merits of his claims and denied his habeas corpus petition on January 28, 2015.

This court lacks jurisdiction to hear an unauthorized successive habeas corpus petition. Burton v. Stewart, 549 U.S. 147, 157 (2007). As stated above, Mr. Miller already filed a federal habeas petition challenging his 2005 drug dealing conviction. Regardless of whether the claims he want to present are new or the same as those previously presented, the petition must be dismissed. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). New claims can be presented Under certain circumstances,

28 U.S.C. § 2244(b)(2), but “before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3).

Mr. Miller hasn’t obtained an order from the U.S. Court of Appeals for the Seventh Circuit permitting him to proceed with any new claims. “A district court *must* dismiss a second or successive petition, without awaiting any response from the [state], unless the court of appeals has given approval for its filing.” Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). This petition must be dismissed.

For these reasons, the petition is DISMISSED for want of jurisdiction and the clerk is DIRECTED to close this case.

SO ORDERED on November 18, 2019

s/ Robert L. Miller, Jr.
JUDGE
UNITED STATES DISTRICT COURT